

A
DIALOGUE
BETWEEN
A LAWYER
AND
A COUNTRY GENTLEMAN,
UPON THE SUBJECT OF THE
GAME LAWS.

[Price One Shilling and Six-pence.]

A. A. W. S.
DIALOGUE

between

A LAWYER

AND

A COUNTRY GENTLEMAN

upon the subject of the

GAMING LAWS

JOHN CLYNN

OF THE COUNTRY

[Three One Shilling and Sixpence]

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DIALOGUE
BETWEEN A LAWYER
AND
A COUNTRY GENTLEMAN,
UPON THE SUBJECT OF THE
GAME LAWS,
RELATIVE TO
HARES, PARTRIDGES,
AND PHEASANTS.

Wherein is shewn,
The several QUALIFICATIONS to kill GAME; the
PENALTIES such Persons are liable to who kill
them without such Qualifications; the MANNER of
recovering such Penalties; the DIFFERENCE
between being subject to the Penalties, and being
punished as Trespassers; the DISTINCTION between
voluntary and involuntary Trespassers; the necessary
STEPS to be taken to make wilful Trespassers, and
the CONSEQUENCES of being such; together with
some OBSERVATIONS upon these LAWS.

To which are added

THREE TABLES,
Shewing at one View, the OFFENCES,—the STATUTES
creating them,—the PERSONS to whom the PENALTIES
are given,—the MANNER of Recovery,—and lastly the
several PENALTIES a Person may be liable to by one Act.

With a

LETTER TO JOHN GLYNN, Esq;

Sejeant at Law, and Representative of the County of Middlesex,

Upon the PENAL LAWS of this Country.

BY

A GENTLEMAN OF LINCOLNS-INN,

A Freeholder of Middlesex.

L O N D O N :

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DIABOLIC
BETWEEN A LAWYER
AND
A COUNTRY GENTLEMAN
BY
O A M E N A W
A T R I S T A N T A B L E O F T H E
A R T O F A M I D I A S H A

When a man is born, he
is brought into the world
with a mind as blank as a
sheet of paper. He is
taught by his parents and
the world around him. He
learns to walk, to talk, to
think. He grows up, and
he becomes a man. He
meets with success and
failure. He experiences
joy and sorrow. He
dies, and he is buried.
This is the life of a man.
It is a long and
various journey. It is
a journey of discovery.
It is a journey of growth.
It is a journey of
experience. It is a journey
of learning. It is a journey
of life.

THE END
OF THE
FIRST PART
OF THE
DIABOLIC
BETWEEN A
LAWYER
AND
A COUNTRY
GENTLEMAN
BY
O A M E N A W

TO
JOHN GLYNN, Esq;
SERJEANT AT LAW,
AND
THE REPRESENTATIVE OF THE
COUNTY OF MIDDLESEX.

SIR,

THE criminal laws of this country have often been the subject of my most serious meditation, and if it was possible for me to entertain an ill opinion of my countrymen, the multiplicity of these laws would almost tempt me to think, that

A 3

instead

instead of Englishmen being lovers of generosity and mercy, they were a set of beings whose chief pleasure consisted in spilling the blood of their fellow creatures. I am led into this serious train of thinking from the many capital punishments inflicted upon the most trivial offences. Pardon me, Sir, if I say the most trivial offences; for who will believe that in the land of liberty it is at this instant a capital crime, maliciously to break down the mound of a fish-pond, whereby any fish shall escape, or to cut down a cherry tree in an orchard, or even to be seen for one

one month in the company of persons who call themselves or are called Egyptians.—I am inclined to believe there are very few even amongst the lawyers apprized of the existence of these laws; and if gentlemen whose business and employments call upon them to know the laws, are ignorant of their existence, how much more excusable are those whose pursuits and engagements in life afford no time or opportunity of attending to them. I know very well that ignorance is no excuse; and why? Because every man is supposed to know the difference between right and

wrong. This is a very good general maxim, but it will not hold equally good in all cases. It strikes me as relative only to those crimes which are *mala in se*, and not to the *mala prohibita*. Suppose, for instance, it should be made death to kill a Hare ; a person might dread the consequence of such an Act, but he would feel no remorse of conscience in the Act itself.—I have often lamented, that amongst all the plans adopted to promote the public good, no method has yet been found out for propagating the knowledge of the criminal laws of this country.—Perhaps,

Sir,

Sir, it may be said, should a man be convicted upon any of these obsolete Statutes, the Judge would suspend the execution of the law. Most probably. But as we are to judge of futurity by what hath already happened, and as there have been Jefferis's and Pages, monsters in nature, a time may again come, when such wretches may exist, and take pleasure in imbruing their hands in the blood of their countrymen. Power in the hands of the best men is a dangerous weapon; in the worst, a rod to scourge all mankind with.

I

I will

I will no longer trouble you upon the general subject of Criminal Law, but for a few minutes crave your attention upon the Game Laws, the subject of the ensuing dialogue.—These are very numerous and uncertain. By some a pecuniary, by others a corporal punishment is inflicted upon offenders.—In general, I am rather induced to believe a dispassionate person would consider the punishment more than adequate to the crime created by these laws.—Punishments should be proportioned to the crimes, as they more or less

affect the welfare of society.—
 One man should not be dragged
 forth to expiate with his blood,
 the crime of cutting down a
 cherry tree, or associating with
 Egyptians, whilst another is suf-
 fered to rob his neighbour of his
 reputation with impunity.—Nor
 should a country farmer be whip-
 ped through a town for destroy-
 ing a Pheasant by night, when
 the man who robs me of my
 father by the most atrocious
 perjury, may have the same
 punishment inflicted upon him.

One would almost be tempted
 to think, from the peculiar atten-
 tion

tion the Legislature hath in all ages paid to the preservation of the Game, that there was some sovereign medicinal quality in the blood and juices of these animals, more beneficial to the community than even Dr. Lefevre's prescription ; but, as the publick have never discovered these virtues in them, still if their preservation is really of consequence to the community, would it not be better to pass a law and inflict a penalty of 50*l.* upon those who shall hereafter purchase or receive any Hare, Partridge, &c. from an unqualified person ; let the
seller

feller be the informer, and declare him a competent witness to convict the defendant. By this means you will defeat the ends for which they are caught; destroy the market and you will ruin the poachers, for it is the receiving of stolen goods that encourageth theft. I should be happy to see these laws either corrected or repealed, and should be doubly happy to see my representative stand forth in an age of corruption, and convince the present and future times that there lived a man, who esteemed the life of an Englishman of more conse-

consequence than a cherry tree, that he preferred the personal liberty of his countrymen to the paltry consideration of a Partridge's blood, though spilt in the night, and would rather have a thousand Hares fall victims in the evening to the unhallowed hands of poachers, than that the sacred person of an Englishman should be branded with the infamous stigma of publick whipping.

Such behaviour would prove you worthy of the sacred trust you have aspired to, confirm the generous sentiments of your constituents

stituents in your favour, and
 prove to the present and future
 ages, that the name of GLYNN
 is coequal and synonymous with
 guardian, assertor, and protector
 of the lives, liberties, and pro-
 perties of Englishmen.

I have the satisfaction to be

One of Your Constituents,

and most obedient

humble servant,

A MIDDLESEX FREEHOLDER.

[1841]

instruments in your favour, and
prove to the public and nations
ages, that the name of Garrison
is coequal and synonymous with
Christian, abolition, and protector
of the lives, liberties, and prop-
erty of the Englishman.
I have the satisfaction to be

One of Your Countrymen
and more especially
of the Cause Law and
Justice, and
I am, Sir, very
truly
Yours
Wm Lloyd Garrison

A
DIALOGUE
BETWEEN
A COUNTRY GENTLEMAN
AND A LAWYER,
RELATIVE TO THE
GAME LAWS.

Countryman. MY dear friend, when I last met you in the country, you promised to give me a little history of the Game Laws, and to furnish me with such hints as you said would be necessary for me to observe in reading them.

Lawyer. I did, nor have I been unmindful of my promise.—I have taken some pains to collect materials for your
B instruction

instruction and entertainment, and hope, before a few days are passed, I shall be able to give you all the satisfaction you may require. I have conversed a good deal with my friends upon this subject:—Some have told me, they were originally made with a view of taking the arms out of the hands of the common people, or at least with a design of rendering them inexpert in the use of them; but others have attributed their rise to a desire which the Legislature had of promoting industry and of punishing idleness and vice.—This last opinion I am inclined to favour, as it seems the most rational and most deserving of credit; for in all my searches I have not been able to find a single preamble that can warrant the first conclusion: whereas the punishment of dissolute, disorderly and idle persons, appears manifestly to have been the object of many Statutes.

Countryman. Pray what are the qualifications for killing Hares, Pheasants and Partridges? for I don't wish to trouble you on any other branches of the Game Laws, but what relate to these particular animals.

Lawyer. The qualifications have been different at different times, but they are now fixt by the Statute of the 22^d and 23^d Car. 2^d, so that any person having in his own, or in right of his wife a freehold estate of 100*l.* *per annum*, or 150*l.* leasehold, may kill, or keep animals or engines for the destruction of the game. —These are qualifications by estate.

Countryman. Are there no other qualifications?

Lawyer. Yes.—Any person being a Lord of a manor, the son and heir apparent of an Esquire or other person of higher degree, and the owners and keepers of forests, parks, chaces or warrens, and

game-keepers appointed by Lords of manors, may kill, or keep engines or animals for the destruction of the game with impunity.

Countryman. As you have favoured me with an account of the qualifications, do oblige me likewise with an account of the penalties which may be inflicted upon such as are not possessed of those qualifications.

Lawyer. Any unqualified person who kills a Hare, Partridge or Pheasant, or uses any greyhound, setter or pointer, or any gun, net, or other engine, to kill or destroy the game, is liable to forfeit 5*l.*, and by the Statute of Queen Ann, the penalty was recoverable only by information before a Justice of peace upon the oath of one or more witnesses,—one moiety to be paid to the informer, and the other to the poor of the parish where the offence was committed;—this penalty

was

was directed to be levied by distress, and for want thereof the party to be sent to the house of correction for 3 Months for the first offence, and 4 Months for every other.—But in process of time such a number of inconveniences and difficulties arose to obstruct the enforcing of this Act, that in George the 1st's reign it was found necessary to enlarge the powers of prosecutors, and therefore an Act was passed, enabling them to recover the penalty by action upon the case, debt, bill, plaint or information; and the plaintiff, if he recovers, is intitled to double costs.*

* I should be glad to be informed by what rule or authority the masters, prothonotaries and other officers who tax costs, when an Act of Parliament gives, in express terms double or treble costs, allow, where the single costs amount to 100*l.* only 150*l.* for double, or 175*l.* for treble costs.—If by any rule in arithmetick they can make it

Countryman. Pray where is the difference in the modes of prosecution?

Lawyer. The former is a very speedy method of proceeding of a summary nature, whereby the Justice convenes the delinquent before him, and proceeds
to

appear, that 150*l.* is twice, and 175*l.* three times as much as 100*l.* I will readily subscribe to their rules of construction; but to say that the Legislature meant only to give full and ample costs, when they have expressly given double or treble costs, is putting a construction upon a Statute in direct contradiction to its express meaning, which I conceive no officer hath any power to do.—I apprehend the additional costs are given as a penalty.—Besides when the Legislature mean to give only full costs, the statute expressly mentions it, so that where the law directs the payment of full costs, it then leaves it at the discretion of the officer, but where it hath fixed them at double or treble, he has no right to exercise a discretionary power, but tacitly to obey the positive mandates of the Law.—I hope the masters will excuse this observation, as I propose it merely for information's sake, for no person in the Law entertains a greater respect, or thinks more highly of their candid and upright behaviour than myself.

to immediate tryal, conviction, or acquittal; whereas, by the latter you are obliged to go through a regular, legal proceeding, which though in some respects more eligible, is attended with so great an expence that few people can bear it; and upon this consideration I presume prosecutors in general adopt this mode of proceeding.—Besides, Sir, there are less difficulties in penning the proceedings by action * or information, than in word-
ing

* In all cases, where any action is commenced for the recovery of any of the penalties under the Game Laws, as the prosecutor may make use of any name, whether fictitious or real, it will be prudent for the defendant, if he means to stand tryal, to move the court, if in Term-time, or to apply to a Judge for a summons, to shew cause why the plaintiff should not give security for the costs, in case he should be nonsuited, or discontinue the action, and that all proceedings may be stayed in the mean time. This application should regularly be made before the defendant hath pleaded, or at the utmost before the issue is delivered, else it will answer little or no end. It being a

ing a conviction before a Justice, very few of which are able to stand the test when removed into the King's Bench. —I scarce ever remember to have seen in my practice, a case where a conviction before a Justice hath been confirmed by the King's Bench.

Countryman. You surprize me much. Pray what is the consequence of a conviction being quashed?

Lawyer. The party convicted may either bring an action against the prosecutor for the penalty he paid him; or, in case he
obliged

common practice amongst dirty fellows to commence actions upon Penal Statutes in fictitious names, and when they have got the issue money to proceed no further. If the defendant's Attorney is apprehensive the action was commenced upon this principle, he had much better never pay for the declaration. He is not obliged to do it, nor can the plaintiff sign judgment for want thereof, as in the case of an issue.

obliged the Justice to make a distress, may proceed against the Justice for a trespass, and recover a satisfaction equivalent to the value of the goods; for if the conviction appears upon removal to be improper upon the face of it, and insufficient to warrant the conclusions drawn by the Justice, the Court is bound to quash it; and for this reason the ultimate power of judging is vested in the Court of King's Bench, lest Justices (who by the bye are pretty great tyrants) should in consequence of an absolute power vested in them, arbitrarily exercise it to the prejudice of their neighbours.

Countryman. Is there any difference in the proceeding against the prosecutor and the Justice after quashing the conviction?

Lawyer. Yes! a very material one.—
In commencing an action against the prosecutor you have only to pursue the common rules made use of in ordinary cases; whereas,

whereas, if you prosecute the Justice, you must give him a month's notice before you can proceed, and take care to bring your action within six months or you will lose your remedy; and this is not the only difficulty, for you must prove the notice at the tryal, and will not be suffered to recover a satisfaction for any injury but what is mentioned in that notice.—It behoves you therefore, to take special care how you word your notice, for the Court will not permit you to bring proof of distraining and selling any thing, but what is particularly specified therein.—This strictness arises in consequence of an Act of Parliament passed in George the second's time, for the better securing Justices of the Peace in the execution of their offices; and it appears to be founded in great wisdom and justice, in as much as persons heated with passion and resentment, would frequently

quently be induced to commence a prosecution against a Justice, who might have acted very innocently and with great uprightness, though the conviction he drew up eventually turned out informal and irregular.

Countryman. I really think that a Justice ought to be rendered as safe as possible in the execution of his office, as few gentlemen otherwise would ever take it upon them. It is sufficient that they devote their time to the good of the public, the business of itself is troublesome enough without increasing the difficulties. For my own part, I don't know a more valuable member of the community, than an honest conscientious Justice of the Peace.—But, pray, what is the cause of quashing these convictions? I am very desirous of knowing.

Lawyer. Suppose an information had been laid before a Justice of the Peace,

upon the Statute of Queen Ann, against A, for killing a Partridge in the parish of Stow, and the witness produced and examined before the Justice in support of the charge, was a parishioner of Stow, one half of the penalty being directed to be paid to the informer, and the other to the poor of the parish; though the Justice should convict the defendant, yet, it appearing that the witness was a parishioner of Stow, this would be a good cause for quashing the conviction, because the witness was incompetent, inasmuch as he was interested in the event of the suit.

Countryman. Pray has this always been held to be a sufficient cause?

Lawyer. Not always; there hath been a great variety of opinions about it.— Some have said that the parishioners *ex necessitate* ought to be admitted as competent witnesses; that the advantage

tage arising from a conviction would be too trifling a byass ; whilst others have insisted, that the rule of law being positive, no one who hath any interest in the event of the suit ought to be admitted.—In short, this controversy was so very strong, and it being impossible to fix what degree of interest would or would not influence the mind, the Legislature interposed, and passed an Act in George the third's reign, whereby the whole penalty is given to the informer, and every objection to the competency of a parishioner's evidence clearly removed.

Countryman. Pray, Sir, can qualified persons kill Game when they please ?

Lawyer. There is no limited time for killing Hares ; but by an Act passed in the second year of King George the third, it is declared illegal to take, kill, destroy, carry, sell, buy, or have in possession,

possession, any Partridge, between the 12th day of February, and the 1st day of September; and Pheasants between the 1st day of February, and the 1st day of October; and a penalty of 5*l.* is imposed upon all persons qualified, or unqualified, who should be found offending against this Statute.—So that, as the law now stands, if any unqualified person should kill a Partridge, or a Pheasant, in the month of March, he would be liable to pay 5*l.* for the mere act of killing, and 5*l.* for killing it at that season of the year. Indeed, if a qualified, or unqualified person was informed against, for keeping live Partridges in a mew in the month of March, though he should prove the catching them at a lawful season of the year, yet there being no exception of Partridges mentioned in this Act, the party in whose possession they are found, must, I conceive, be adjudged

judged guilty within the meaning of this law; for the bare act of possession, is deemed by the law an exposing to sale, which subjects the party to a penalty of 5 *l.*; but Pheasants being expressly excepted out of this Act, there is no danger of a qualified person incurring a penalty by keeping them alive, provided he does not catch them after the expiration of the time limited by this Act.

Countryman. But is there no particular time of the day fixed for killing Game?

Lawyer. Yes; by an Act passed in the 10th year of George the third, cha. 19th, it is declared, That if any person shall wilfully, upon any pretence whatsoever, take, kill, or destroy any Hare, Pheasant, Partridge, &c. in the night, between one hour after Sun-setting, and one hour before Sun-rising, or use any gun, dog, snare, net, or other engine, for taking, killing, or destroying any
Hare,

Hare, Pheasant, Partridge, &c. in the night as aforesaid, and shall be convicted thereof, upon the oath of one or more credible witness or witnesses, before one or more Justice or Justices of the Peace; every such person shall, for the first offence, be committed to the common gaol, or house of correction; there to remain without bail or mainprize, for any time not exceeding six, nor less than three calendar months; and for the second, and other offences to be committed as aforesaid, for not less than six, and not more than twelve calendar months; and within three days from the time of commitment, either for the first or any other offence, to be once publicly whipped, between the hours of twelve and one of the clock in the day.

Countryman. My God! Sir, you have terrified me almost out of my senses.

Lawyer. Nay, but this is not all ; for, if you take, kill, or destroy any Hare, Pheasant, Partridge, &c. on a Sunday; you are subject to a penalty of 20 *l.* to be levied by distress, with charges ; one half to the informer, and the other to the poor of the parish ; and for want of distress, to be committed for any time not exceeding six, and not less than three calendar months.—However, my dear friend, for your comfort there is a proviso ; that, if any person shall think himself aggrieved by any thing done in pursuance of this Act, such person may appeal to the Justices of the Peace, at the next General Quarter Session of the Peace, to be held for the county or place, wherein the cause of complaint shall arise *and within four days after the cause of complaint shall have arisen, such appellant giving, or causing to be given, fourteen days notice at least, in*

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writing,

writing, of his or her intention to bring such appeal, and of the matter thereof, to the person, or persons, whose acts are complained against; and within two days after such notice, entering recognizance before some Justice of the Peace for such county, with two sufficient sureties conditioned to try such appeal, and abide by the order of, and to pay such costs as shall be awarded by the Justices, at such Quarter Session; and the said Justices, at such Session, upon due proof of such notice being given as aforesaid, and of the entering into such recognizance, shall hear, and finally determine the causes and matters of such appeal in a summary way, and award such costs to the parties appealing or appealed against, as they, the said Justices, shall think proper.—And this Act declares such order of the said Sessions

Sessions to be final, and incapable of being removed.

Countryman. I hope, Sir, you will excuse the observations I shall make; they are what occur to a plain honest country gentleman; who, though not conversant in matters of law, wishes to avoid incurring their penalties.—In the first place, this Act appears to be perpetual.—Secondly, there is no time limited for commencing a prosecution for offences against it; so that if any person hath killed, taken, or destroyed, or used any gun, dog, snare, net, or other engine, for the taking, killing, or destroying any Hare, Partridge, Pheasant, &c. in the night, between one hour after Sun-setting, and one hour before Sun-rising, since this Act took place, though he should have done it for the purpose of satisfying the longings of a lady with-child, and the clearest proof should be

given thereof; yet, notwithstanding all this, three years hence, upon an information, he may, like Sir Walter Raleigh, be dragged out of his bed in a high fever, to answer for this most enormous crime; and upon proof of the charge, by one or more witness or witnesses, be committed to the common gaol, or house of correction, without bail or mainprize, for six, or three months, at the discretion of the Justice; and within three days after his commitment, be once publicly whipped in the town, between the hours of twelve and one of the clock in the day.—Upon my soul, I sweated from head to toe when I read the Act.—But, Sir, these are not the only objections I have to the Act; it is big with such inconveniencies that a poor country fellow like myself, would find it very difficult to avoid a conviction or escape punishment.

ment.—For, as this law now stands, should a poor man be so unfortunate as to labour under a charge of this kind, if he happened not to appeal against the Justice's order within four days, or to neglect giving fourteen days notice, or should not be fortunate enough to find a couple of friends, who would within two days after such notice enter into the recognizance required by the Statute, he must submit to be imprisoned for six or three months in a gaol, and be whipped at the mercy of the executioner, though as innocent as a lamb of the crime laid to his charge. Besides, Sir, if he should mean to appeal to the Quarter Sessions, and accidentally omit taking any one of the steps requisite for bringing the matter before the Quarter Sessions, the order of conviction before a single Justice would in such case be

final and conclusive. Perhaps I may be told that my arguments are founded upon supposition. Granted. But yet I have a right to suppose cases that may possibly exist; for if lawyers have difficulties in understanding Penal Laws, how much more difficult must an ignorant country fellow find it, who perhaps never heard of the crime before he was called upon to answer it. For, though the Laws of England will not suffer a person to plead ignorance as an excuse, because they suppose every one to know the difference between right and wrong; yet, a great deal is to be said for him who is guilty of a crime (not in itself, but from prohibition) when the means of information hath not been allowed him.—If the clergy throughout every parish in the kingdom were bound to read every new Penal Law as soon as

it came out, and to be paid for so doing, the public would have no room to complain of the want of information.

Lawyer. I wish with all my heart, that your hint was to be improved upon; for, I believe very few Englishmen know, that at this instant it is death to cut down a cherry tree in an orchard, or to break down the mound of a fish-pond, whereby any fish shall escape.

Countryman. I believe not.—But, I have other objections to this Night Act;—it hath left too great a power in the Justice.—He may construe the four days time to appeal inclusive; the defendant may have considered it as exclusive, and upon this quibble the poor man may be punished.—Besides, Sir, the Act having given no power to the Justice to suspend the execution

tion of the law, till the time for appealing is expired ; he is obliged to order the defendant to be whipped within three days, or he cannot legally do it at all ; for if he was to have him whipped the fourth day he would exceed the authority given him by the Statute, and consequently subject himself to all the inconveniencies of having acted illegally.—On the other hand, if he orders the defendant to be punished within the time fixed by the Statute, and the law is put in force, yet, as the Statute has given a defendant four days to appeal against the Justice's order, though it directs him to be punished within three days, if upon an appeal the fourth day the order is reversed, it will follow of course that the man has been punished innocently ; yet, notwithstanding this, I presume no action would lie against the

the

the Justice in such a case. He is bound by the Statute to punish a defendant within three days, and though it eventually turns out to be improperly inflicted upon an innocent man, yet, till this order is reversed, he stands legally convicted, and the Justice has done no more than what he was lawfully authorized to do.

Lawyer. The Statute is very ambiguous I confess; and I fear Justices (who at best are but men) will put that construction upon it, which will best serve their purpose.

Countryman. But, pray Sir, suppose no one but the informer, or an inhabitant of the parish should happen to appear in support of the charge, as they are intitled each to a moiety of the penalty, would not that be a good objection to their testimony?

Lawyer. I think it would, for they are interested in the event of the suit, and consequently incompetent witnesses.

Countryman. Suppose the party should neglect to object to their competency, and upon this illegal or non-evidence (for I take unlawful evidence and no evidence at all to be one and the same thing) should be convicted, what remedy would he have after he had omitted to appeal?

Lawyer. None, that I know of.

Countryman. This is very extraordinary indeed.

Lawyer. Extraordinary as it may appear, I take it to be law.——For, if through ignorance or neglect, the party omits appealing against the Justice's order to the Quarter Sessions, within the time appointed, he is precluded ever afterwards.

Countryman. I am obliged to you for this explanation, and hope in God's name this Night Act will soon be repealed; or I shall walk about my grounds in a winter's evening with as much fear of meeting a Hare, Partridge, or Pheasant, as another man would have in approaching a lion or a mad bull.

Lawyer. As this Act has so terrified you, we will drop all further conversation upon it if you please. *

* *N. B.* Over and above the Statutes I have already mentioned, and which relate to the publick at large, "It is declared, by the Statute of the tenth of George the third, (intituled, An Act for punishing Mutiny and Desertion, and for the better Payment of the Army and their Quarters) for the better preservation of the Game, in or near any such place, where any officer or soldiers shall at any time be quartered, That, from and after the 24th of March 1770, if any officer or soldier shall, without leave of the lord of the manor, under his hand and seal, first had and obtained, take,

Countryman. With all my heart.—
But, do resolve me a few doubts concerning these laws.

take, kill, or destroy any Hare, Coney, Pheasant, Partridge, Pigeon, &c. within the kingdom of Great Britain, and upon complaint thereof, shall be convicted before any Justice of the Peace; every officer so offending, shall, for every such offence, forfeit 5*l.* to be distributed among the poor of the place, where such offence shall be committed; and every officer commanding in chief upon the place where such offence has been committed by any soldier under his command, shall forfeit 20*s.* to be paid and distributed in manner aforesaid; and if upon conviction, made by the Justices of the Peace, and demand thereof also made by the Constable or Overseers of the poor, such officer shall refuse or neglect, and not within two days pay the said respective penalties, such officer so refusing or neglecting, shall forfeit, and he is thereby declared to have forfeited his commission, and his commission is thereby declared to be null and void.”—Though this Statute continues in force only for a year, yet, as it makes one man responsible for the acts of another, I confess it strikes me as being too rigid.—If a commander in chief encouraged his men to go out and kill Game,
it

Lawyer. With a great deal of pleasure.

Countryman. You must know, I have often heard it said, that if a Lord of the manor, his Game-keeper, or any other qualified person, started a Hare, or sprung a Partridge, he might follow it wherever he pleased.

it would be but just that he should be punished for it; but, for a general or other officer, being made liable for the faults and offences of another person, which he could not prevent, appears rather inconsistent with my notions of natural Justice; however, I will leave the military gentlemen to comment upon this Statute, as it affects them only. However, it will be necessary for all unqualified officers to remember, that if they shoot Hares, &c. on a Sunday, without the consent of the Lord of the manor, that for every offence they are liable to forfeit 40*l*. Five pounds for killing a Hare, five pounds for destroying it without the consent of the Lord of the manor, and twenty pounds for killing it on a Sunday.

Lawyer. That is in some measure, but not altogether true. A Lord of a manor may kill Game in most places, whether on his own or another man's estate, without being liable to incur any penalties created by the Game Laws, provided, he does it at a proper season. But, a Game-keeper, being only qualified to kill Game within the manor he presides over, if he goes beyond the boundaries of it, he thereby subjects himself to all the penalties of the law, like any other unqualified person;—his qualification is not only merely local, but it has several requisites necessary to compleat and perfect it. He must be a menial Servant (if an unqualified person) and his appointment must be created by deed, and that deed must be enrolled with the Clerk of the Peace for the county; for a mere verbal ap-
pointment,

pointment, or even an appointment under hand and seal, unless inrolled, will no wise avail him,

Countryman. Suppose a Lord of a manor, or other qualified person, shoots a Partridge upon his own ground, and it happens to fall upon his neighbour's estate, can either of them go there and pick it up without the consent of the owner of the ground?

Lawyer. They may pick the bird up, though upon another's ground, without incurring any penalty under the Statutes; their qualifications exempt them from that. But yet, they are liable to an action of trespass for coming upon another's grounds without his consent; such a proceeding is considered in the eye of the law as an invasion of another man's right, for which he may maintain an action of trespass. Nay, the law is so tender of private property,
and

and the rights of individuals, that if A, being a qualified person, and having a road through the estate of B, should kill a pheasant as he walked along the road, and it should fall within seven yards of the path, he could not justify going out of it, without subjecting himself to an action for so doing.

Countryman. Under such circumstances, I should apprehend a person would recover but very little or no damages. The trespass is too inconsiderable.

Lawyer. Though the trespass is never so trifling, the party trespassed upon has a right of action.—The measure of damages is one thing, the power of redress is another.—The former is in the breast of a jury, the latter inherent in the party.—The right of an Englishman must not be violated with impunity; but in order to prevent trivial suits, it is
I enacted,

enacted, by the 22d and 23d Car. 2. Chap. 9. That in all actions of trespass, assault, and battery, and other personal actions, wherein the Judge at the trial shall not find and certify under his hand upon the back of the record, that an assault and battery was sufficiently proved, or that the freehold or title of the land mentioned in the plaintiff's declaration was chiefly in question; if the Jury find damages under forty shillings, the plaintiff shall not recover more costs than the damage, and if more costs given, the judgment shall be void, and the defendant may have his action for such vexatious suits.—Though this Statute prevented many litigations, yet, as it extended only to trespasses where the plaintiff recovered forty shillings and upwards for the injury done, or where the title came in question, the effect did

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not

not prove equal to the design.—Sportsmen sheltered themselves under this law, became wilful trespassers, and roved with impunity over their neighbours property; whilst the honest freeholders, from the expence of law, and the hazard of proving damages to the amount of forty shillings, were deterred from commencing prosecutions.—In process of time, however, gentlemen saw the difficulties this law exposed the farmers to; and though they were unable to prove damages to the amount of forty shillings, yet, as these small trespasses began to grow very numerous, and were very wilfully repeated, it became a real grievance to the landholder, insomuch that the Legislature interposed, and for preventing wilful and malicious trespasses, passed an Act in the 8th and 9th of W. 3. and thereby declared, “ That in all actions
of

of trespasss, to be commenced and prosecuted from and after the 25th day of March 1697, in any of his Majesty's Courts of Record at Westminster; wherein, at the trial of the cause at Westminster, it shall appear and be certified by the Judge, under his hand on the back of the record, That the trespass upon which any defendant shall be found guilty, was wilful and malicious, the plaintiff shall recover not only his damages, but his full costs of suit, any former law to the contrary notwithstanding." This Statute greatly lessened the number of wilful trespassers, and secured the laborious freeholder in the quiet possession and enjoyment of his property, or at least gave him an opportunity of punishing those who should dare to disturb his repose. However, my friend, there are some steps necessary to be taken previous

to the commencement of an action for a wilful trespass, which, if omitted, will prove fatal. The plaintiff must give notice to the defendant to keep off his lands ; and I think it should be in writing (though I am not fully satisfied in that particular) as he must prove it at the trial of the cause, or otherwise without he recovers damages to the amount of forty shillings and upwards, he will be entitled to no more costs than damages. — The proof of a general notice in the news papers, unless the plaintiff can make it appear that the defendant knew and read it, would not be sufficient. — But above all, the plaintiff must remember that as well in cases where the freehold came in question, as where there has been evidence of a wilful trespass, he must apply for the Judge's certificate in court, or otherwise he will lose his costs.

costs.—These hints (for I have not time to enter more largely upon the subject) if duly attended to, will prove of great service to you, who spend so much of your time in rural amusements.

Countryman. I am greatly obliged to you, and will read them with attention; for whilst these laws continue in force it will be impossible for country people to live in peace without knowing them.—But, when I consider that whatever design the Legislature might originally have in making them, whether with a view of taking the arms out of the hands of the common people, or from a design of punishing idleness and vice; yet, as they have ceased to answer the virtuous ends of their creation, they ought at least to be corrected, if not abolished. For, it is too well known to need any proof that there is not a gentleman in the country,

country, whether of the quorum or not, but will readily purchase Hares, Partridges, or Pheasants of those poachers, for whose punishment these laws were instituted.—But this is not all; these insignificant animals have produced irreconcilable breaches in private families, and have done more mischief than all the poachers in England.—Yet am I no friend to poachers, and far be it from me to promote idleness; I love to see and encourage virtuous industry; but when I behold laws which are said to be formed for the punishment of laziness, applied as instruments of oppression, I confess I long to have them repealed or put upon a better footing; for in a well regulated and free government, no law ought to exist, however well founded, that may be applied to gratify private pique or resentment; and I believe the gentlemen

gentlemen of the law will readily agree that fifty prosecutions are commenced upon tyrannical and revengeful principles, to one founded upon the honourable motive of serving the publick.

The TABLE

able motive of leaving the public place to one founded upon the narrow-minded and revengeful principle that fifty positions are commenced by the last will merely to give

THE TABLE

setting, and one hour before sunrise.

Shewing the several OFFENCES; the ACTS creating the PENALTIES; the PERSONS to whom such PENALTIES are given; and the MANNER of recovering them.

N. B. For the Information of Gentlemen not conversant in legal expressions, it will be necessary to observe, that where *Qui tam* is mentioned, the Penalty is given half to the Informer and the other half to the Poor of the Parish, and when the *Qui tam* is taken away, the whole Penalty is given to the Informer.

Shewing the several OFFENCES; the ACTS creating the PENALTIES; the PERSONS to whom such PENALTIES are given; and the MANNER of recovering them.

E.
Double Offences.

Shewing the several OFFENCES; the ACTS creating the PENALTIES; the PERSONS to whom such PENALTIES are given; and the MANNER of recovering them.

A.										B.	C.	D.
PHEASANTS.										Alis.	To whom the Penalties are given.	The Manner of Recovering them.
Single Offences.												
For killing in the Night.	7. 5	7. 5	7. 5	7. 5	7. 5	7. 5	7. 5	7. 5	7. 5	9 Anne, ch. 25. sect. 3. Qui tam.	By Information before a Justice, or by Action of Debt, Bill, Plaint, or Information.	
For killing, &c. between 1 Febr. and 1 Octob.	5	5	5	5	5	5	5	5	5	2 Geo. 3. ch. 19. Informer.	By Action of Debt, Bill, Plaint, or Information.	
For killing without the Consent of Lord of the Manor.	0	0	0	0	0	0	0	0	0	10 G. 3. ch. 19. Title Mutiny and Desertion Act.	By Information before a Justice.	
For killing, &c. on a Sunday.	20	20	20	20	20	20	20	20	20	10 G. 3. ch. 19. Qui tam.	By Information before a Justice.	
For using a Lurcher or Setting-Dog.	0	5	5	5	5	5	5	5	5	5 Ann. ch. 14. sect. 4. Qui tam.	By Information before a Justice of the Peace, or by Action of Debt, Cate, Bill, Plaint, or Information.	
For keeping Setting-Dogs, Tunnells, or other Engines to kill or destroy.	0	5	5	5	5	5	5	5	5	5 Ann. ch. 14. sect. 4. Qui tam.	By Information before a Justice of the Peace, or by Action of Debt, Cate, Bill, Plaint, or Information.	
For expoling to Sale.	0	5	5	5	5	5	5	5	5	9 Ann. ch. 25. Qui tam.	By Information before a Justice of Peace, or by Action of Debt, Bill, Plaint, or Information.	
For killing.	5	5	5	5	5	5	5	5	5	28 G. 2. ch. 12. Qui tam.	By Information before a Justice of Peace, or by Action of Debt, Bill, Plaint, or Information.	
For using a Gun &c. to kill or destroy.	0	5	5	5	5	5	5	5	5	5 Ann. ch. 14. Qui tam.	By Information before a Justice of Peace, or by Action of Debt, Bill, Plaint, or Information.	
For killing between one Hour after Sun-setting and one Hour before Sun-rising.	Whipping and Imprisonment.	D ^o .	D ^o .	D ^o .	D ^o .	D ^o .	D ^o .	D ^o .	D ^o .	10 G. 3. ch. 19. Qui tam.	Information before a Justice.	
E.												
Double Offences.												
For killing in the Night one Hour after Sun-setting, and one Hour before Sun-rising.	D ^o .											
For killing in the Night one Hour after Sun-setting, and one Hour before Sun-rising on a Sunday.	D ^o .											
For killing in the Night one Hour after Sun-setting, and one Hour before Sun-rising on a Sunday between 1 Febr. and 1 Octobr.	D ^o .											
For using a Gun to kill in the Night one Hour after Sun-setting, and one Hour before Sun-rising.	D ^o .											
For using a Gun to kill in the Night one Hour after Sun-setting, and one Hour before Sun-rising on a Sunday.	D ^o .											
For using a Gun to kill in the Night one Hour after Sun-setting, and one Hour before Sun-rising on a Sunday between 1 Febr. and 1 Octobr.	D ^o .											
For killing in the Night one Hour after Sun-setting, and one Hour before Sun-rising.	D ^o .											
For killing in the Night one Hour after Sun-setting, and one Hour before Sun-rising on a Sunday.	D ^o .											
For killing in the Night one Hour after Sun-setting, and one Hour before Sun-rising on a Sunday between 1 Febr. and 1 Octobr.	D ^o .											
For using a Gun to kill or destroy in the Night one Hour after Sun-setting, and one Hour before Sun-rising.	D ^o .	5										
For using a Gun to kill or destroy in the Night one Hour after Sun-setting, and one Hour before Sun-rising on a Sunday.	D ^o .	5										
For using a Gun to kill or destroy in the Night one Hour after Sun-setting, and one Hour before Sun-rising on a Sunday between 1 Febr. and 1 Octobr.	D ^o .	5										
For killing in the Night one Hour after Sun-setting, and one Hour before Sun-rising.	D ^o .											
For killing in the Night one Hour after Sun-setting, and one Hour before Sun-rising on a Sunday.	D ^o .											
For killing in the Night one Hour after Sun-setting and one Hour before Sun-rising on a Sunday between 1 Febr. and 1 Octobr.	D ^o .											
For killing in the Night one Hour after Sun-setting, and one Hour before Sun-rising on a Sunday between 1 Febr. and 1 Octobr. without Consent of Lord of the Manor.	D ^o .											
For using a Gun to kill or destroy in the Night one Hour after Sun-setting, and one Hour before Sun-rising.	D ^o .	5										
For using a Gun to kill or destroy in the Night one Hour after Sun-setting, and one Hour before Sun-rising on a Sunday.	D ^o .	5										
For using a Gun to kill or destroy in the Night one Hour after Sun-setting, and one Hour before Sun-rising, on a Sunday between 1 Febr. and 1 Octobr.	D ^o .	5										
For using a Gun to kill or destroy in the Night one Hour after Sun-setting, and one Hour before Sun-rising, on a Sunday, between 1 Febr. and 1 Octobr. without the Lord of the Manor's Consent.	D ^o .	5										
A. The single Offences.												
B. The several Acts of Parliament creating the Penalties.												
C. Denoting to whom the Penalties are given.												
D. The several Methods of recovering the several Penalties.												
E. The several Penalties an Offender is liable to by a single Act.												
N. B. For the Information of Gentlemen not conversant in legal expressions, it will be necessary to observe, that where Qui tam is mentioned, the Penalty is given half to the Informer and the other half to the Poor of the Parish, and when the Qui tam is taken away, the whole Penalty is given to the Informer.												